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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 272

TRUNKLINE GAS COMPANY,
Petitioner,

v.

HARDIN COUNTY,
Respondent.

PETITIONER'S REPLY BRIEF

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To The Honorable Earl Warren,
Chief Justice of the United States,
and The Associate Justices of
The Supreme Court of the United States:

Respondent's brief in opposition attempts to gloss over the real and important issues in this case by a prolixity of artfully contrived but specious arguments. Petitioner, Trunkline Gas Company, files this Reply Brief to correct some of the larger erroneous assertions made in Respondent's brief.

I.

THE IMPORTANCE OF THE CASE WARRANTS THE GRANTING OF THE WRIT

In support of its first point, that there is no reason for the Court to grant a writ of certiorari in this case, Respond-

ent first argues that the Court of Appeals stated the validating act, Article 6674n-3, does not apply to this case and that Petitioner does not attack this construction of the statute. The statement in the second opinion of the court below (Supp. R. 85-97), as to inapplicability of the new statute, was obviously added as an after-thought, in an attempt to buttress the balance of the opinion and the judgment. In any event, Respondent's assertion to the contrary notwithstanding, Petitioner, at pages 12 to 13 of its petition for a writ of certiorari, has directly attacked and shown to be erroneous the statement of the court below that the new statute does not deal with the situation involved in this case.

Respondent also urges under its first point that this case is isolated and, therefore, not important enough to warrant consideration by this Court. In so doing, Respondent ignores the following:

(i) The statement by the court below that the case involves "constitutional questions of great moment and import";

(ii) The emergency clause of the new statute, showing that the first judgment of the Court of Appeals, now re-entered, created an emergency; and

(iii) The testimony of Respondent's County Judge, at pages 158 to 159 of the record printed for use in the court below, that Petitioner's case is one of a great number, which shows the importance of this case to Respondent, to the rest of the State, and to the entire pipe line industry, as well as to Petitioner.

Clearly, neither the constitutional questions nor the other questions involved are "episodic," as Respondent would have the Court believe.

II.

THE DECISION OF APRIL 15, 1964, IS NOT CORRECT

The new statute, Article 6674n-3, is applicable and is not unconstitutional. Respondent's arguments to the contrary are answered in the petition for writ of certiorari. However, Petitioner does respectfully call the Court's attention to important misstatements in Respondent's brief (page 13) with respect to *Henson* v. *Commissioners Court of Henderson County*, 56 S.W. 2d 240 (Tex. Civ. App., 1932, error refused). Respondent states (i) that the case did not involve a situation where void county road bonds had been validated by subsequent statutes and (ii) that a county contract was not involved. These statements, which might mislead the Court, must fail in the light of the following language from the opinion in that case:

> "During 1919, road district No. 13 of Henderson County was created, and *bonds* amounting to $75,000 payable in thirty installments, bearing 5½ per cent. annual interest were authorized; the *bonds* were regularly issued, sold, and the proceeds used to build and operate public roads in said district. On September 14, 1931, the commissioners' court of Henderson County levied an ad valorem tax of $2 on each $100 valuation of taxable property in the district for the redemption of the matured and immediately maturing *bonds* and interest thereon. George Henson, appellant, a resident property owner and taxpayer in said district, for himself and on behalf of all others similarly situated, sued the commissioners' court of Henderson County, its tax assessor and collector, to enjoin the collection of the tax levy above mentioned."
>
> • • •
>
> "The effect of the validating statutes was to legalize all such road districts, including road district No. 13, Henderson County; established their boundaries as

> selected by the petitioners and defined by the commissioners' court; ***validated all bonds issued*** and all proceedings of commissioners' court pertaining to the creation of road districts as bodies corporate; also validated the construction of public roads therein, and all *levies of taxes made for the redemption of bonds issued.*"
>
> • • •
>
> "Appellant contends, however, that the validating acts are repugnant to section 53, art. 3, of our Constitution, reading: . . .
>
> "This section, in our opinion, has no application to the subject under consideration, because of the effect that must be given the validating acts; therefore, without further discussion, we overrule appellant's contention in this respect." (Emphasis supplied.)

The Texas Supreme Court approved this opinion by refusing a writ of error without any qualifying notation. As bonds are nothing more than contracts to pay money, as county and road district bonds are not distinguishable, and as the bonds as well as the tax levies to pay them were validated, the *Henson* case is squarely in point in the present case.

Also in point, of course, are the other authorities cited in the petition for a writ of certiorari. And Petitioner would particularly call the Court's attention to the leading Texas case of *Anderson County Road Dist. No. 8* v. *Pollard*, 296 S.W. 1062 (Tex. Sup.; 1927).

Under the applicable authorities a void county contract can be authorized and ratified by a statute subsequently enacted by the state legislature. Section 53 of Article III of the Texas Constitution does not contain a requirement that a county contract be authorized by a "pre-existing" law, and the authority of law required by that section may therefore be supplied by a subsequent validating act such as that involved in this case.

CONCLUSION

The other matters presented by Respondent's brief in opposition are covered by the petition for a writ of certiorari. Petitioner will not repeat its arguments here.

For the reasons stated above and those stated in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted,

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PROOF OF SERVICE

The undersigned counsel for Petitioner, Trunkline Gas Company, a member of the Bar of the Supreme Court of the United States, certifies that copies of the foregoing brief have been served upon Respondent, Hardin County, by depositing same in the United States mail, with first-class postage prepaid, addressed to Mr. Wm. Robert Smith, Tower Life Building, San Antonio, Texas, and to Messrs. Sears and Burns and Mr. Robert L. Burns, 1811 C&I Life Building, Houston, Texas 77002, attorneys of record for Respondent, this 24 day of September, 1964.

CECIL N. COOK
Counsel for Petitioner